

Decision 02-10-049 October 24, 2002

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Joint Application of

ADVANCED TELCOM, INC.,
D/B/A ADVANCED TELCOM GROUP,
A/K/A DELAWARE ADVANCED TELCOM,
INC.

AND

GE BUSINESS PRODUCTIVITY SOLUTIONS,
INC.

Application 02-07-036
(July 16, 2002)

For Expedited Approval of (i) the Transfer of Certain Assets and Customers of Advanced TelCom, Inc. to GE Business Productivity Solutions, Inc.; (ii) the Transfer of the Existing Telecommunications Authority of Advanced TelCom, Inc. to GE Business Productivity Solutions, Inc.; and (iii) the Discontinuance of Telecommunications Service by Advanced TelCom, Inc. in the State of California.

O P I N I O N

Summary

This application seeks approval under Sections 851-854 of the Public Utilities Code of a transaction that will result in a change of control of Advanced TelCom, Inc. (U-6083-C), d/b/a Advanced TelCom Group (ATG), a/k/a Delaware Advanced TelCom, Inc., to GE Business Productivity Solutions, Inc.

(U-5334-C), (GEBPS). The transaction is structured to take effect upon completion of ATG's Chapter 11 bankruptcy proceeding. The application is unopposed. The application is granted.

Background

ATG is a Delaware Corporation, headquartered at 19 Old Courthouse Square, Santa Rosa, California. It was authorized to provide interexchange telecommunications services in California in Decision (D.) 98-11-038 on November 9, 1998, and authorized to provide local exchange service in D.99-02-004, February 2, 1999. It also is authorized by the Federal Communications Commission to provide domestic interstate and international services as a non-dominant carrier.

ATG currently provides both local exchange and interexchange telecommunications services through the use of its own facilities. GEBPS is presently authorized to provide resold interexchange telecommunications in the State of California. GEBPS was granted its CPCN by D.93-10-022 on October 6, 1993 when it was first known as GE Capital Communications Service Corp.

GEBPS is a wholly owned subsidiary of General Electric Capital Corporation, which in turn is a wholly owned subsidiary of General Electric Capital Services, Inc., which in turn is a wholly owned subsidiary of General Electric Company, (GE). GE, a publicly held New York corporation, is one of the largest and most diversified industrial corporations in the world. GEBPS is authorized to provide, and currently is providing, resold long distance telecommunications services to business and residential customers in the State of California, and in every state in the United States except Alaska. GEBPS is also authorized by the Federal Communications Commission to provide international switched telecommunications services on a resold basis.

Applicants request that the Commission grant them the authority to consummate a transaction arising out of ATG's Chapter 11 bankruptcy proceeding that compels ATG to transfer certain of its telecommunications assets in the State of California and attendant customer base to GEBPS without interruption of service. The actual date for the transfer of ATG's current customers to GEBPS and the discontinuance of service by ATG cannot be determined at this time, completion of the transaction requires various state and federal regulatory approvals, including this Commission's grant to GEBPS of the telecommunications authority necessary to provide the facilities-based and resold competitive local exchange telecommunications services and facilities-based interexchange telecommunications services currently provided by ATG in the State of California. Applicants seek expedited approval of a transfer of certain specified ATG assets, ATG's customers in Santa Rosa, Petaluma, Rohnert Park, Cotati and adjacent unincorporated areas and ATG's Certificates of Public Convenience and Necessity (CPCNs), to GEBPS, and the withdrawal of ATG from providing telecommunications services in those affected service areas.

Since GEBPS is authorized to provide only resold interexchange telecommunications in the State of California, it must obtain the existing authorizations of ATG to provide service to ATG's existing customers. Accordingly, applicants are requesting authority to transfer to GEBPS certain of the assets and customers of ATG, including the CPCNs currently held by ATG to provide the services currently provided by ATG. Because GEBPS is acquiring the assets, and not the stock of ATG, upon completion of the transaction, ATG no longer will provide telecommunications services in the affected service areas. Accordingly, ATG requests authority to discontinue the provision of

telecommunications services in the affected ATG service areas upon the transfer of certain of its assets and customer base to GEBPS.

Description of the Transaction

Applicants state that after its inception in December 1998, ATG grew quickly and enjoyed early success. The sudden collapse of the capital markets for technology companies, however, unexpectedly denied ATG continued access to the capital necessary for the operation and expansion of the business. As a result, on May 2, 2002, ATG announced that it had filed for bankruptcy law protection under Chapter 11 of the United States Bankruptcy Code in the U.S. Bankruptcy Court for the Northern District of California, Santa Rosa Division (Bankruptcy Court). ATG chose to auction its assets, and on June 21, 2002, the Bankruptcy Court approved the sale to GEBPS of certain assets of ATG, pursuant to the Bankruptcy Code, and to the terms and conditions of the asset purchase agreement (APA) and certain other agreements (Transaction). The ATG assets, which are the subject of the Transaction include those located in California (partial), Nevada, Oregon and Washington, where ATG is authorized to provide facilities-based and resold local exchange and interexchange telecommunications services, and currently provides such services to approximately 30,000 customers. The closing of the asset sale requires, among other things, that the applicants obtain all necessary state and federal regulatory approvals. Thus, prior to the transfer of ATG's California customer base, GEBPS must obtain the necessary authorizations to provide the telecommunications services currently provided by ATG to customers in the affected ATG services areas.

To ensure the continuity of service to the current customers of ATG, a Management Agreement, which is expected to be approved by the Bankruptcy Court in the near future, requires that GEBPS provide management services to

ATG and fund ATG's continued telecommunications operations pending the necessary state and federal regulatory approvals. At such time as the necessary approvals are obtained, ATG's assets and customer base in the affected service areas will be transferred to GEBPS, except to the extent that the current customers of ATG designate a different carrier.

Following completion of the Transaction, GEBPS will provide the same telecommunications services to former customers of ATG in the State of California, pursuant to the same service arrangements, at the same rates, and pursuant to substantially the same terms and conditions, as those currently offered by ATG. To ensure a seamless transition, and to avoid customer confusion or inconvenience, the applicants provided written notification to the affected customers of ATG on August 23, 2002, which details the proposed change in service provider in accordance with the applicable requirements of the Federal Communications Commission and the California Public Utilities Commission for changing a customer's presubscribed carrier.

Managerial Qualifications

Applicants state that GEBPS has the requisite managerial qualifications to provide telecommunications services in the State of California. Since 1994, GEBPS has been managed by essentially the same team of experienced telecommunications personnel, which has demonstrated experience in running a complex and highly successful business. Their expertise, along with the added talent of various management and operations personnel from ATG, will allow them to successfully expand into the local telecommunications marketplace. GEBPS intends to employ many of ATG's current employees, each with extensive experience in the telecommunications industry. Collectively, the members of GEBPS's management team have widespread industry experience

from inside and outside the competitive telecommunications industry. That experience is delineated in Exhibit E to the application. We agree that GEBPS management is very well qualified.

Public Interest

The applicants state that the authorization requested serves the public interest. Specifically, applicants note that the Commission's expedited approval of the transfer of certain of ATG's existing assets and customer base to GEBPS will eliminate the threat of disruption of service to the affected ATG customers who could lose service due to the bankrupt status of ATG, and will accrue to the benefit of ATG's current customers by allowing them to move to their service provider while ATG still has the financial wherewithal to continue uninterrupted service. Moreover, the applicants note, the transfer of certain of ATG's assets and customer base will increase competition in the California competitive local exchange market.

Discussion

Pub. Util. Code §§ 851-854 require Commission authorization before a company may "merge, acquire, or control...any public utility organized and doing business in this state...." The purpose of these sections is to enable the Commission, before any transfer of public utility property is consummated, to review the situation and to take such action, as a condition of the transfer, as the public interest may require. (San Jose Water Co. (1916) 10 CRC 56.)

The proposed transfer of control here promises improved services for California consumers. No changes in the existing services of ATG are proposed.

We authorize applicants' request to consummate the proposed transaction. Where a company such as GEBPS, which does not possess a local exchange CPCN, seeks to acquire control of a company that does possess a CPCN, we

apply the same requirements as in the case of an applicant seeking a CPCN to exercise the type of authority held by the companies being acquired. (*Joint application of Empire One Telecommunications, Inc. and EOT Acquisition Corporation*, D.99-12-022, mimeo., p. 2.) Since ATG possesses a CPCN to act as a provider of intrastate local exchange and long distance telephone services, we will apply the requirements for such authority to GEBPS.

The Commission has established two major criteria for the issuance of a CPCN to act as a facilities-based provider of telecommunications services. An applicant that desires to act as such must demonstrate that it has a minimum of \$100,000 cash or cash equivalent,¹ reasonably liquid and readily available to meet the firm's startup expenses. An applicant that desires to act as a switchless reseller must demonstrate that it has a minimum of \$25,000 in cash or cash equivalent, reasonably liquid and readily available to meet startup expenses. GEBPS currently meets that test. GEBPS as a prospective facilities-based carrier must meet the \$100,000 test. GEBPS far exceeds the \$100,000 minimum, as shown in its financial data provided as Exhibit E to this application.

A new entrant must also make a reasonable showing of technical or managerial expertise in telecommunications or a related business. While GEBPS is technically a new local exchange company, most of its operating personnel, managerial and technical personnel come from ATG. GEBPS' and ATG's managerial, technical and operational team's experience is extensive. GEBPS meets the Commission's managerial, technical and financial criteria.

¹ As described in D.95-12-056, Appendix C, Paragraph 4A (1-2) (63 CPUC2d 700 at 756).

No new construction is being proposed as part of this transaction. Therefore, there is no possibility that the proposed transaction contemplated herein may have any significant effect on the environment.

Notice of the filing of this application appeared in the Commission's Daily Calendar on July 26, 2002. There are no protests, and the contemplated transfer of control appears to be noncontroversial. In Resolution ALJ 176-3092, dated August 8, 2002, the Commission preliminarily categorized this proceeding as ratesetting, and preliminarily determined that hearings were not necessary. Based on the record, we conclude that a public hearing is not necessary, nor is it necessary to alter the preliminary determinations in Resolution ALJ 176-3092.

The application is granted, subject to the terms and conditions set forth below.

This is an uncontested matter in which the decision grants the relief requested. Accordingly, pursuant to Pub. Util. Code § 311(g)(2), the otherwise applicable 30-day period for public review and comment is being waived.

Assignment of Proceeding

Michael Peevey is the Assigned Commissioner and Dean Evans is the assigned Administrative Law Judge in this proceeding.

Findings of Fact

1. On May 2, 2002, ATG filed a voluntary petition for protection under Chapter 11 of the U. S. Bankruptcy Code.
2. Notice of these application appeared in the Daily Calendar on July 26, 2002.
3. On or about August 23, 2002, ATG advised its California customers by letter that it would be seeking regulatory authorization to transfer its accounts and services to GE Business Productivity Solutions, Inc (GEBPS).

4. GEBPS meets the technical and financial requirements for a new local exchange entrant. Existing customers of ATG should see no disruption of service.

5. There will be no change in current service or rates provided by GEBPS as result of this transaction.

6. The proposed change in control is in the public interest as customers of GEBPS will avoid the risk of disruption of service.

7. No new construction is being proposed.

8. No protests or responses have been filed to this application.

Conclusions of Law

1. This proceeding is designated a ratesetting proceeding; no protests have been received; no hearing is necessary.

2. The application should be granted and the transfer of control approved as in the public interest.

O R D E R

IT IS ORDERED that:

1. Advanced TelCom Inc., d/b/a Advanced TelCom Group, (ATG) a/k/a Delaware Advanced TelCom, Inc. and GE Business Productivity Solutions, Inc. (GEBPS) (collectively, applicants) are authorized pursuant to Pub. Util. Code §§ 851-854 to enter into the transaction, as more fully described in the application and its exhibits, by which GEBPS, will acquire certain assets of ATG in the State of California, including the certificate of public convenience and necessity presently held by ATG.

2. Applicants shall notify the Director of the Commission's Telecommunications Division in writing of the transfer of authority, as

authorized herein, within 10 days of the date of consummation of such transfer.

A true copy of the instruments of transfer shall be attached to the notification.

3. GEBPS and ATG shall make all books and records available for review and inspection upon Commission staff request.

4. The authority granted herein shall expire if not exercised within one year of the date of this order.

5. Application 02-07-036 is closed.

This order is effective today.

Dated October 24, 2002, at San Francisco, California.

LORETTA M. LYNCH
President
HENRY M. DUQUE
CARL W. WOOD
GEOFFREY F. BROWN
MICHAEL R. PEEVEY
Commissioners